LEONG CHIEW KEONG & ANOR

v.

RENAISSANCE RESOURCES SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[SUIT NO: S2-22-332-1996]
15 APRIL 1998

LEGAL PROFESSION: *Remuneration - Agreement on costs - Costs below prescribed scale fees on non-contentious matters - Solicitors' Remuneration Order 1991, O. 3 - Whether agreement enforceable - Whether there can be an oral agreement - Legal Profession Act 1976, s. 114(1)*

The defendant, through its agent, had retained the plaintiffs, both advocates and solicitors of a legal firm, to undertake conveyancing work in respect of certain pieces of land which it intended to purchase. Subsequently, the plaintiffs issued three invoices amounting to RM383,197.37 for work done. The defendant alleged that the plaintiffs had agreed orally, through its agent, that the total fees were not to exceed RM100,000, which was less than the prescribed scale fees under the Solicitors' Remuneration Order 1991. The plaintiffs, on the other hand, denied any such agreement. Further, the agent of the defendant, whilst agreeing that he was the agent of the defendant in retaining the services of the plaintiffs, denied the existence of any prior agreement to fix the fees at RM100,000.

Held:

[1] This case involved issues relating to solicitors' remuneration for work done on non-contentious matters. In the case of *In re A Solicitor*, it was held that any agreement between a solicitor and his client regarding remuneration in non-contentious matters must be in writing.

[1a] However, s. 114(1) of the Legal Profession Act 1976 in clear and express terms prohibits any agreement which seeks to provide for a solicitor's remuneration to be charged at a scale lower than the prescribed scale fee, whether or not that agreement is in writing. Therefore, the only possible agreements under the LPA are agreements that are in writing and provide for costs at a scale higher than the prescribed scale fees.

[1b] The defendant's allegation that there was an agreement to fix the plaintiff's legal fee at RM100,000 was effectively an allegation to provide for costs at a scale lower than the prescribed scale fee under O. 3 of the Solicitors' Remuneration Order 1991. The invoices issued by the plaintiffs were computed in accordance with this prescribed scale, and amounted to RM383,197.37, an amount that exceeded that alleged by the defendant as the agreed amount.

[2] Even if there was an agreement as alleged by the defendant, which the court found not to exist, by virtue of the Legal Profession Act 1976, such an agreement could not be enforced.

[Judgment for the plaintiffs.]

Case referred to:
In re A Solicitor [1956] QBD 155 ***(foll)***

Legislation referred to:
Legal Profession Act 1976, ss. 113, (4), (6), 114(1), (3)
Solicitors' Remuneration Order 1991, O. 3
Solicitors Act 1932 [UK], ss. 56, (1), (3), (7), 57, (1), (3), 58

Other source referred to:
Halsbury's Laws of England, 4th edn, para 144

For the plaintiffs - CK Leong (TC Lim with him); M/s CK Leong & TC Lim
For the defendant - Aznim Azhar; M/s Tengku Mohamed & Alan Lim

Reported by Kavitha Gunasegaran

JUDGMENT

RK Nathan J:

Facts

The plaintiffs are both advocates and solicitors and partners in the legal firm of Tetuan CK Leong & TC Lim. Sometime in December 1995 the defendant, through its agent or representative, one Soon Chye, retained the plaintiffs to undertake the conveyancing work in respect of certain pieces of land which the defendant intended to purchase. Pursuant to their appointment, the plaintiffs attended a series of meetings with all parties concerned to finalise the sale and purchase agreements. In addition, the plaintiffs also travelled to the Labis Land Registry and the Johor Bahru Land Registry to conduct searches on all 96 title deeds involved. Three different sale and purchase agreements were signed in respect of the 96 titles on 9 January 1996. On the same day the

plaintiffs issued three invoices in respect of each of the said transactions. The total of the three invoices amounted to RM383,197.37. These invoices were issued in accordance with the fixed scale fees as laid down under the Solicitors' Remuneration Order 1991.

Court's Findings

It was the case for the defendant that the plaintiffs had agreed orally with its agent, Soon Chye, that the total fees was not to exceed RM100,000. The plaintiffs having filed this writ for RM383,197.37 applied for summary judgment. The deputy registrar who heard the application gave judgment for the agreed sum of RM100,000 and gave the defendant unconditional leave to defend. Both the parties then appealed against this decision. The plaintiffs appealed on the basis that the deputy registrar was wrong to give leave to defend the balance sum, and the defendant appealed against the deputy registrar's decision in giving summary judgment for the sum of RM100,000. I heard both appeals on 8 July 1997 and dismissed both appeals with costs. There has been no appeal by either party against my decision.

After numerous pre-trial case managements I fixed the case for trial on 24 and 25 March 1998. On 19 March 1998 I received a letter from the defendant's solicitors that they had been instructed to discharge themselves as solicitors. Since I had fixed two dates for trial, on 24 March 1998 when counsel for the defendant appeared, I directed that I would adjourn the matter to the next day and would proceed with the case if the defendant failed to appear and give satisfactory explanation for this sudden discharge of its solicitors. Since neither a director nor a representative of the defendant appeared on 24 March 1998, I proceeded with the case.

The 2nd plaintiff gave evidence on behalf of himself and his partner, the 1st plaintiff. His evidence was that the work done by his firm entailed the following:

(1) Preparing all the necessary forms and submitting to the foreign investment committee (FIC) to obtain the necessary consent to the transactions. This application was submitted on 8 April 1996. The application was approved by the FIC on 14 August 1996.

(2) Preparing all the necessary forms and submitting the Real Property Gains Tax declarations to the Inland Revenue on behalf of the defendant on 14 June 1996.

(3) Advising the defendant on all their obligations under the agreements.

(4) Liaising with all parties concerned and ensuring the payments of the purchase price by the defendant in accordance with the time stipulated under the agreements. Where necessary, the plaintiffs obtained extension of time for the defendant.

The 2nd plaintiff denied any agreement to charge RM100,000 which was less than the scale fees. The plaintiffs also subpoenaed Soon Chye who, whilst agreeing he was the agent of the defendant in retaining the services of the plaintiffs, denied the existence of any prior agreement to fix the fees at RM100,000.

In the absence of any rebuttal evidence, I accept the plaintiffs' evidence.

Issues Arising Out Of Solicitors' Appointment

Although a claim for legal fees could raise three issues, namely, the due appointment of the solicitors, the proper performance of the work, and the correct computation of the legal fees, I find that none of these three can arise in this case for the following reasons. I find that there is no dispute that the defendant in fact appointed the plaintiffs as their solicitors. This was never even raised in the defence nor in the summary proceedings. A second reason is that the defendant never complained in its defence of any dissatisfaction with, or impropriety in, the work of the plaintiffs. Thirdly, the amounts as stated in the three invoices were never subjected to query or challenge.

Sole Issue In This Case

I find that this whole case hinges on the one and only issue, that is whether there was in existence an agreement between the plaintiffs and Soon Chye, the defendant's agent, to only charge a sum of RM100,000 as their legal fees for all the work done.

Is There Such An Agreement?

Even if there was which I do not so find, Soon Chye has denied in court that there was such an agreement, either written or oral. In any case, even during the summary proceedings stage no such agreement was produced nor any affidavit from Soon Chye, to that effect. Soon Chye went further in his evidence by saying that he never represented to the defendant that there was such an agreement. One other factor I take into consideration is that although the three invoices were sent on 9 January 1996, it was only after the letter of demand dated 19 June 1996 was sent to the defendant, that the defendant

raised this defence of not exceeding RM100,000 as the fees. It was the duty of the defendant to have taken issue with the invoices and to have protested the billing and to have referred to the existence of the so-called agreement to settle at RM100,000. I can only conclude that this late raising of this issue must have been as a result of an afterthought.

Fees Regarding Contentious And Non-Contentious Matters

This case involves issues relating to solicitors' remuneration for work done on non-contentious matters. It is common that different considerations are to be taken in, in respect of work undertaken in contentious and non-contentious matters. Contentious matters are broadly defined as litigious matters involving court proceedings. Non-contentious matters, by nature of its nomenclature, is not litigious and do not involve court proceedings and conveyancing work is a clear example of non-contentious work. The relevance to this distinction becomes apparent when reference is made to *Halsbury's Laws of England* 4th edn, para. 144, which states:

> ... The client who sets up an agreement with the solicitor relating to contentious business is not bound to show that it has been made in accordance with the statutory terms before he can enforce it unless he claims a benefit given by the statute because his right to make an agreement at common law is not affected by the statute. However, the position as regards non-contentious business is entirely regulated by statute.

The legality of any agreement regarding legal fees therefore depends on whether the work undertaken is contentious or non-contentious. The case of *In re A Solicitor* [1956] QBD 155 where the facts are almost similar to the case before me, needs consideration. In that case a firm of solicitors was appointed to carry out a number of conveyancing transactions. The client contended that there was an oral agreement between the solicitors and himself to charge less than the authorised scale in certain cases. It was the client's case that the alleged oral agreement could be relied upon to displace the scale fees provided by statute. It was his submission that since this was the position regarding contentious matters the same ruling ought to apply in respect of non-contentious matters because to hold otherwise, he said, would be to create an anomaly between contentious and non-contentious matters. The court however held that in so far as non-contentious matters are concerned, the clear and express wordings of the statute must be followed. In that case, the relevant provisions of the statute which governed remuneration in non-contentious matters were ss. 56, 57 and 58 of the Solicitors Act 1932. The said relevant sub-sections are reproduced:

Section 56(7):

> As long as any order under this section is in operation, the taxation of bills of costs of solicitors shall, subject to the provisions of the next succeeding section with respect to agreements as to remuneration, be regulated by that order.

Section 57(1):

> Whether or not any order is in force under the last preceding section, a solicitor and his client, may either before or after or in the course of the transaction of any non-contentious business by the solicitor make an agreement as to the remuneration of the solicitor in respect thereof.

Section 57(3):

> The agreement shall be in writing and signed by the person to be bound thereby or his agent in that behalf.

In accordance with s. 57(3) and by virtue that there was no evidence of any agreement in writing, the court held that the client could not enforce the alleged oral agreement. This the court held so even without venturing to establish whether there was in fact any oral agreement between the client and the solicitors.

Two important ratios from *In re A Solicitor (supra)* apply equally to the case before me:

(a) In contentious matters, any agreements, whether oral or written, between the client and solicitors as to remuneration can be enforced by the client.

(b) In non-contentious matters, the position is governed entirely by statute and that the clear and express words of the relevant statute must be given effect.

It is to be noted that the relevant provisions in Malaysia were modelled and followed closely after the Solicitors Act 1932.

In the instant case, the relevant provisions are ss. 113(4), 113(6) 114(1) and 114(3) of the Legal Profession Act 1976 as well as the Solicitors Remuneration Order 1991. I reproduce below the said provisions:

Section 113(4):

> An order made under this section, may as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to

length, or in any other mode, or partly in one mode and partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other, considerations.

Section 113(6):

So long as an order made under this section is in operation, taxation of bills of costs of advocates and solicitors in respect of non-contentious business shall, subject to Section 121, be regulated by that order.

It is to be noted that s. 113(6) of the Legal Profession Act 1976 (Malaysia) is similar to s. 56(7) of the Solicitors Act 1932. The reference to s. 121 concerns contentious matters and is therefore, not relevant to the issue here.

Section 114(1):

Whether or not any order is in force under Section 113, an advocate and solicitor and his client may, either before or after or in the course of the transaction of any non-contentious business, make an agreement as to the remuneration of the advocate and solicitor in respect thereof:

Provided that such agreement shall not provide for costs at a scale lower than that provided by any order made under Section 113.

Section 114(3):

The agreement shall be in writing and signed by the person bound by it or as his agent on his behalf.

It can be seen that ss. 114(1) and (3) of the Legal Profession Act 1976 enacts almost word for word, the provisions contained in ss. 57(1) and (3) of the Solicitors Act 1932. It is my judgment, therefore, that the ratio of *In re A Solicitor (supra)* should be applied here. That is to say, any agreement between a solicitor and his client regarding remuneration in non-contentious matters must be in writing.

Section 114(1) of the Legal Profession Act 1976 however provides an important qualification to s. 57(1) of the Solicitors Act 1932. It states that although a solicitor and his client may make such agreements, it is subject to the provision '... that such agreement shall not provide for costs at a scale lower than that provided by any order made under s. 113'.

In very clear and express terms, this section thus prohibits any agreement which seeks to provide for a solicitor's remuneration to be charged at a scale lower than the prescribed scale fee, whether or not that agreement is in writing. The only possible agreements allowable by the Legal Profession Act 1976 is

therefore agreements that are in writing and provide for costs at a scale higher than the prescribed scale.

The order made pursuant to s. 113 of the Legal Profession Act 1976 is the Solicitors Remuneration Order 1991. Order 3 deals with non-contentious matters. It reads as follows:

FIRST SCHEDULE

Sale and Transfer.

Consideration/Adjudicated Value (whichever is the higher)	Scale Fees
For the first RM100,000	1.00%
For the next RM4,900,000	0.50%
For the next RM5,000,000	0.25%
Where the consideration/ adjudicated value (whichever is the higher) is in excess of RM10,000,000	Negotiable on the excess but shall not exceed 0.25%'

The defendant's allegation that there is an agreement to fix the plaintiffs' legal fee at RM100,000 is effectively an allegation to provide for costs at a scale lower than the prescribed scale fee. The invoices issued by the plaintiffs were computed in accordance with this prescribed scale, and amounts to RM383,197.37, an amount that exceeds that alleged by the defendant as the agreed amount.

It is my judgment that even if there is such an agreement as alleged by the defendant, which I have already found does not exist, by virtue of the Legal Profession Act 1976, such an agreement cannot be enforced.

Having considered the entire evidence, I enter judgment for the plaintiffs for the balance sum of RM283,197.37 with interest at 4% from 9 January 1996 to date of judgment and costs.